

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No.808/2018**

% **24th September, 2018**

RANJEET SINGH

..... Appellant

Through: Mr. C.S. Bhandari, Advocate
with Mr. Rahul Boru, Advocate
(M. No.8860346364).

versus

EAST DELHI MUNICIPAL CORPORATION
& ORS.

...Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Nos.39065-66/2018(exemption)

1. Exemption allowed subject to just exceptions.

C.M.s stand disposed of.

C.M. No.39067/2018(for condonation of delay)

2. For the reasons stated in the application, delay of two days in re-filing the appeal is condoned.

C.M. stands disposed of.

RFA No.808/2018

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the Judgment of the Trial Court dated 19.05.2018 by which trial has rejected the plaint under Order VII Rule 11 CPC on the ground that the plaint lacks valid cause of action. In my opinion, in fact the suit plaint not only was liable to be rejected under Order VII Rule 11 CPC but the fact of the matter is that on the admitted facts appearing on record the suit had to be dismissed even applying Order XII Rule 6 CPC.

4. The facts of the case are, that the appellant/plaintiff filed the subject suit for possession and injunction with respect to three properties bearing nos. A-862, A-863 and A-864, Gharoli Dairy Farm. Each of the plot measures about 50 sq mtrs. There were a total of five defendants in the suit. Defendant no.1 was the East Delhi Municipal Corporation. Defendant no. 2 was the Director of Animal Husbandry Department of Delhi. Defendant nos. 3 to 5 were the private persons who were said to be in occupation of the plots A-862, A-863 and A-

864 respectively being Sh. Rakesh Kumar, Smt. Hemlata and Sh. Subhash Chand. As per the plaint, the appellant/plaintiff pleaded that in view of the dairy business being closed within the main city of Delhi, the appellant/plaintiff was allotted the subject plots as alternate plots for carrying on dairy farming. The dairy farming business was closed in Delhi during the emergency days and the dairy farms were shifted to Gharoli area where the suit plots are situated. The appellant/plaintiff thereafter pleaded in the plaint that he had earlier filed a writ petition against the Municipal Corporation but the same was disposed of in an LPA vide order dated 29.09.2015. It is not stated in the plaint what this order dated 29.09.2015 said, but the factual position which emerges on record is that the writ petition was disposed of because the appellant/plaintiff was advised to file a civil suit seeking relief with respect to the suit properties. This Order dated 29.09.2015 passed in an **LPA no. 650/2015** against the order disposing of the writ petition has been reproduced in para 2 of the plaint wherein it states that the appellant/plaintiff should invoke civil remedy for recovery of possession of the suit properties. In the plaint, the appellant/plaintiff further pleads that he made enquiries as to the

persons in possession of the suit properties and this was revealed to him in response to an RTI query that respondent nos. 3 to 5/defendant nos. 3 to 5 are in possession of the suit properties. This RTI query is of the year 2012. The plaint further pleads that the appellant/plaintiff was affected by the 1984 riots and hence the limitation for filing of the suit be condoned. Plaint thereafter pleads unauthorized possession of the defendant nos.3 to 5 and hence seeks the relief of possession of the properties from the respondents/defendants. Though the plaint contains 19 paras, however, in order to understand the complete lack of substance or existence of cause of action in the plaint, this Court has no option but to reproduce the entire plaint and this plaint filed by the appellant/plaintiff, and which has been rejected in terms of the impugned judgment of the trial court, reads as under:-

“1. That briefly the case of the Plaintiff is that the Plaintiff has been engaged in running Dairy business from his childhood and has been cathering and milching the buffaloes and selling the dairy products to the consumers without any complaint or grievances from anyone. It is further submitted that the Plaintiff filed a Writ Petition before the Hon’ble High Court of Delhi at New Delhi which was dismissed and the order of the Writ Petition was challenged in L.P.A.No. 650/2015 but the same was disposed off by order dated 29.09.2015.

The Plaintiff is seeking the possession of the properties A-862, A-863 & A -864 Gharoli Dairy Farm, Delhi which was allotted in lieu of the dairy farm operating in the colonies and during the emergency the dairy farms were shifted to Gharoli and thereafter it has never been permitted to operate a dairy farm in the colony. Even one cow is not permitted to be kept in the colony particularly in the residential area.

The Plaintiff has the business of milk vending but since the dairy farm has been under the possession of strangers in connivance with the animal husbandary of the EDMC without any right, title or interest.

2. That the Hon'ble High Court of Delhi at New Delhi was pleased to pass the following order:

“LPA No. 650/2015

Learned counsel for the appellants states that after the appeal was filed, on a re-look it was decided by the learned Single Judge the appellant should invoke civil remedies for recovery of possession of the property which was the subject matter of the writ; possession being with third party as on today.”

3. That the plaintiff visited the property and made inquiry about the persons who are in the possession of the property and it was claimed by the persons in possession that the possession has been given to the Defendants No.3 to 5.

4. That the Defendants No. 1 & 2 have illegally passed on the possession to Defendants No.3 to 5 but in the record it was revealed by way of R.T.I. that the plots are allotted to the Plaintiff and it is the Plaintiff who is the allottee of the properties.

5. That in response to the R.T.I. filed by the Plaintiff it was disclosed by the EDMC that the three plots of the Plaintiff are in possession of the three different persons at the instance of the officers of the MCD and the Defendants No.3 to 5 do not have any right, title or interest in the properties as the Plaintiff is the original allottee and continue to be allottee of those plots.

6. That it is further submitted that it is a case of 1984 riots and hence the limitation has been condoned. Further, it is submitted that in all other cases riots the delay has been condoned and further the compensation is being given even today as and when the matter is brought to the notice of the authorities, but in the present case the officers of the Defendants No.1 & 2 have not taken any cognizance in the matter, though it has been brought to the notice of the Defendants No.1 & 2 that the delay in filing the L.P.A has been condoned and hence it would be just and proper if the matter is considered for giving back the possession to the Plaintiff by the defendants No.1 & 2.

7. That even otherwise the Defendants No.3 to 5 are under unauthorized occupation and carrying out the business in the suit premises which is not permissible under the law.

8. That it is further submitted that the plots were restored to the actual owner on the condition that these plots will not be used for any commercial purposes but the same can be used only for residential purposes and hence the Defendants No.1 & 2 are not taking steps to take back the possession and restored the same to the allottee who has to run his dairy business even at present.

9. That it will not be out of way to mention that as on date also the Plaintiff has been engaged in the dairy business itself and the milk vending work is being carried out by the Plaintiff even today.

10. That further it has been admitted by the EDMC that the property stands in the name of the Plaintiff and also it has neither been transferred nor re-allotted to any one. However, the Plaintiff is ready and willing to pay the arrears if any if upto date demand is raised and also undertakes not to use the property for any other purposes except the dairy business or for his residential purposes.

11. That the Defendants EDMC has become a silent expectator and allowed the strangers to use the plot for commercial purpose and as on date the plots are being used for commercial purposes and if at all the plots are to be used then it is limited to the extent of residential purposes only.

12. That the Defendants have ignored the purpose of using the property and some strangers without any right, title or interest are using the same for commercial purposes which is not permissible. Further, unless any title has been created by the Defendants No.1 to 3, none can be permitted to stay and use the property ignoring the right of a person who is the original allottee of the plots.

13. That further the plots have been allotted for the dairy purposes and the allottee is carrying out the business of dairy only even today and if these plots are restored then the Plaintiff himself will use those plots for dairy purposes and the purpose of the use of plots will not be defeated.

14. That the Plaintiff filed the Writ Petition as prima-facie no evidence is required in view of the information received by the Plaintiff by way of R.T.I. but however, since the rights of the Plaintiff are to be proved hence the Writ petition was disposed off as no evidence can be recorded in the proceedings under article 226 of the Constitution of India and the delay was also condoned in view of the genuineness of the case as it relates to 1984 riots and once the Hon'ble High Court has been pleased to condone the delay, hence it would be just and proper if the present suit is admitted and notice is issued as the value of the property is below 2 Crores but since it is a

suit for Permanent & Mandatory injunction and hence the Plaintiff has got the discretion to fix the value of the suit and hence the present suit.

15. That the Defendants are in possession without any right, title or interest and hence the Defendants are under obligation to handover the possession of the properties to the Plaintiff and hence the present suit.

16. That the Plaintiff is seeking the possession of the plots mentioned above and the delay has been condoned in the special circumstances. The three plots are measuring 150 sq. yds. on which proper court fee is being paid.

17. That the cause of action arose in the matter on 29.09.2015 when the Writ petition was disposed off with the direction to institute the suit for mandatory injunction from the EDMC and the cause of action is continued as the EDMC has not restored the possession to the Plaintiff and the EDMC has also not taken possession from the other Defendants and hence the cause of action is continuing.

18. That the value of the suit for permanent injunction is fixed and also the value of the suit for possession is also fixed at Rs.21, lacs the proper court fee is paid.

19. That the property is situated within the territorial jurisdiction of this Hon'ble Court and the parties to the suit also reside and work for gain within the territorial jurisdiction of this Hon'ble Court and hence the Hon'ble Court is competent to entertain the present suit.

PRAYER:

It is, therefore most respectfully prayed that this Hon'ble Court may kindly be pleased to grant the following reliefs:

A. The Hon'ble Court may kindly pass a decree for possession in favour of the Plaintiff and against the Defendants thereby the possession of properties No.A-862, A-863 & A-864, GHAROLI DAIRY FARM, DELHI may kindly be ordered to be vacated by Defendants No.3 to 5 and possession be ordered to be delivered to the Plaintiff and the Defendants be directed to return the possession/handover the possession of the properties mentioned above to the Plaintiff as shown in the site plan in the facts and circumstances of the case.

B. The Hon'ble Court may kindly pass a decree for permanent injunction whereby the Defendants be restrained from passing on the possession of the properties mentioned above to any other person in the interest of justice.

C. Any other relief which this Hon'ble Court may deem fit and proper also be passed in favour of the Plaintiff and against the Defendants.”

5. A reading of the plaint shows that plaint is completely silent as to what is the date of allotment of the suit plots by the Municipal Corporation in favour of the appellant/plaintiff. The plaint is also silent as to when the appellant/plaintiff came in possession of the suit plots. The plaint is also silent as to when the appellant/plaintiff lost possession of the suit plots. The appellant/plaintiff has tried to seek benefit of the reply to an RTI query of the year 2012, however this Court fails to understand as to how a reply to an RTI query in any manner, change the aspect of the cause of action of the appellant/plaintiff having lost possession of the suit properties which were allotted to the appellant/plaintiff, and admittedly as stated before this Court that possession was also delivered by the Municipal Corporation to the appellant/plaintiff. Para 6 of the plaint talks of the limitation for filing of the suit be condoned as the appellant/plaintiff is a person affected by 1984 riots, however,

in law there is no condonation of delay for filing of a suit under Section 5 of the Limitation Act 1963. The plaint thereafter only talks of the respondent nos. 3 to 5/defendant nos.3 to 5 being in illegal possession and consequently the entitlement of the appellant/plaintiff to possession of the suit land and the cause of action para pleads that cause of action accrued on 29.09.2015 but not stating that dispossession of the appellant/plaintiff was on 29.09.2015.

6. In a suit for possession, the first aspect which have to be examined is with respect to the right, title and interest of the appellant/plaintiff in the suit plots and how and when the same arose including examination of how the appellant/plaintiff came into possession. These aspects are conspicuously absent in the suit plaint. The plaint is further conspicuously silent about when the appellant/plaintiff was dispossessed, though indirectly it is stated that the appellant/plaintiff was affected by the 1984 riots, and therefore, in effect it is stated that the possession of the plots was lost around the year 1984. The suit has admittedly been filed in the year 2016 i.e. after 32 years from 1984. The plaint does not state how a RTI query response from the year 2012 relates to arising of the cause of action

with respect to a suit for possession alleging dispossession of the appellant/plaintiff. It was argued on behalf of the appellant/plaintiff by the counsel that the appellant/plaintiff was not aware as to who was in possession of the plots and the same came to his knowledge after the RTI query in 2012. However, this would not have stopped the appellant/plaintiff from filing the suit alleging appellant's/plaintiff's dispossession against whichever persons who were allegedly in illegal possession of the suit plots right from the year 1984 till 2016, after which the subject suit was filed. The plaint, therefore, clearly lacks cause of action, as to when the appellant/plaintiff was dispossessed of the suit plots, for the said suit to be within the period of limitation of 12 years and the same being filed as a suit for possession against illegal occupants and trespassers.

7. The position of lack of cause of action in favour of the appellant/plaintiff is further accentuated by the fact that respondent no. 3/defendant no.3 has claimed ownership of plots by a chain of title documents. This chain of title documents from 1988 to November 2009 are mentioned in para 5 of the preliminary objections of the written statement filed by the defendant no. 3 and this para 5 of the

preliminary objections of the written statement of the defendant no.3

reads as under:-

“5. That the present suit of the plaintiff is not maintainable and is liable to be rejected as at this stage the plaintiff is having no right, title or interest as plaintiff sold out the property bearing No. A-862, A-863 and 864 to one Sh. Raj Kumar S/o Sh. Chattarpal R/o L-60, Vijay Chowk, Laxmi Nagar, Delhi-92 on 20.05.1988 and executed G.P.A. and agreement for sale in his favour, thereafter on 20.03.1989 the above said Raj Kumar sold out all the premises to Sh. Roshan Lal S/o Sh. Jagdish Prasad R/o 21/7677, Kalyanpuri, Delhi-91 and executed a G.P.A., agreement For sale and receipt in his favour. Thereafter the above said Sh. Roshan Lal sold out the premises on 07.05.1990 to Rohtash Giri S/o Sh. Ram Chander Giri R/o 21/81, Kalyanpuri, Delhi and executed a G.P.A., Agreement for sale, and receipt in his favour.

Thereafter Mr. Rohtash Giri sold out the premises bearing NO. A-862, to Sh. Shiv Nandan Singh S/o Sh. Siya Ram Singh R/o A-859, Gharoli Dairy Farm, Shahdara, Delhi on 12.06.91 and executed a GPA, agreement for sale, Deed of Will and affidavit in his favour.

Thereafter on 07.03.1994, Sh. Shiv Nandan Singh sold out the premises bearing No.A-862 to Sh. Bhuvan Chand Pandey S/o Sh. Dharam Nand Pandey R/o A-51, Pandav Nagar, Delhi and executed a G.P.A., Agreement for Sale, affidavit and receipt in his favour.

Thereafter Sh. Bhuvan Chand Pandey sold out the premises to Smt. Leela Pandey and executed a Regd. G.P.A, Deed of Will, Receipt, Agreement for sale and affidavit, in her favour on 26.02.2000 in regard to property bearing No. A-862.

thereafter Smt. Leela Pandey sold out the premises to Sh. Shiv Nandan to Sh. Nand Lal S/o Sh. Ram Dulare R/o A-1240, Gharoli Dairy, Delhi on 28.02.2003 and executed a G.P.A., Agreement for sale, Deed of Will, Affidavit and receipt in his favour.

thereafter Sh. Nand sold out the said premises to Sh. Naresh Kumar Singhla S/o, Sh. Giri Raj Prasad Singhla R/o 15/406, Kalyanpuri, Delhi-91 on 31.07.06 and executed an agreement for sale, G.P.A. Deed of Will and receipt in his faovur on 31.07.06.

Thereafter Sh. Naresh Kumar Singhal sold out the premises to Smt. Mithlesh W/o Shri Pal R/o 228, Khichripur Village Delhi on 10.09.08, by virtue of Regd. G.P.A. agreement for sale, Deed of Will, possession letter, affidavit and receipt in her favour and lastly the property was sold out by Smt. Mithlesh to Smt. Munesh W/o Sh. Bhule Ram R/o Village Gharoli, Delhi on 26.11.09 by executing a irrevocable Regd. G.P.A., Agreement for sale, Deed of Will,

possession letter and payment receipt and Smt. Munesh is in possession of the premises, who is the mother of the applicant and is rightful owner having the titled deed in her favour and all the persons are necessary party to the present suit and in absence of the same the suit of the plaintiff is not maintainable and liable to be dismissed.”

8. Admittedly the appellant/plaintiff has not filed any Replication to the written statement filed by the respondent no. 3/defendant no. 3 and obviously this is so because the appellant/plaintiff would have lost title after having sold the suit properties to Sh. Raj Kumar. If the appellant/plaintiff had not sold the properties way back in the year 1988 to Sh. Raj Kumar, then the appellant/plaintiff should have at least asserted either by filing Replication or stating otherwise the fact that he had never sold out the suit properties to Sh. Raj Kumar, and who by a chain of title documents thereafter affecting ten persons has caused the position of respondent no. 3/defendant no.3 to become the owner of the suit properties through his mother.

9. Therefore, it is seen that the suit plaint does not contain material averments of cause of action as required for a suit for possession. There is no provision in the Limitation Act for condonation of delay for filing of the suit. There is no denial in any

manner by the appellant/plaintiff by filing replication or otherwise as to the fact that appellant/plaintiff did not sell his right, title and interest in the suit properties to Sh. Raj Kumar and which properties thereafter in terms of the chain of title documents of around 28 years came to be vested with the mother of the respondent no. 3/defendant no. 3 namely Smt. Munesh.

9. In view of the aforesaid discussion, I do not find any merit in the appeal. Dismissed.

SEPTEMBER 24, 2018/Ne

VALMIKI J. MEHTA, J

